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Held at the Palais Wilson, Geneva,
on Wednesday, 10 May 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.424/Add.1.

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GE.00-42081 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 CONVENTION (continued)

Initial report of the United States of America (CAT/C/28/Add.5; HRI/CORE/1/Add.49)

1. At the invitation of the Chairman, Mr. Koh, Mr. Yeoman, Mr. Surena, Mr. Campanovo, Ms. Sim and Mr. Solomon (United States of America) took places at the Committee table.

2. The CHAIRMAN invited the delegation of the United States of America to introduce its country's initial report (CAT/C/28/Add.5).

3. Mr. KOH (United States of America) said that the initial report (CAT/C/28/Add.5) had been prepared through extensive collaboration between the Department of State and the Department of Justice, with input from other departments and agencies of the executive branch and from non-governmental organizations (NGOs) and individuals.

4. The United States had long been a vigorous supporter of the international fight against torture. It had played a major role in formulating the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and considered that the Committee's mission was of great importance. The people of the United States had believed from the outset that democracy and freedom were incompatible with torture, and the eighth amendment to the United States Constitution, adopted more than two centuries previously, expressly prohibited "cruel and unusual punishments". The fourth and fifth amendments established the right to security of person and recognized a privilege against self-incrimination. Since then, those provisions had been supplemented by an extensive body of constitutional doctrine, legislation, regulations and administrative and judicial precedent, protecting every individual in the United States against torture. The United States had signed the Convention against Torture in 1992 and ratified it in 1994.

5. Torture was prohibited by law throughout the United States and outlawed as a tool of authority. In every instance, torture was a criminal offence and no category of official was authorized to commit or to instruct anyone else to commit torture. Moreover, no exceptional circumstances could be invoked as a justification for torture. Congress had enacted legislation providing for civil and criminal sanctions at the federal level against those who practised torture and the courts condemned the practice as a matter of international, federal and state law. The Alien Tort Claims Act and the Torture Victims Protection Act provided civil remedies against torturers in the United States and the federal and state executive branches pursued a policy of zero tolerance in respect of torture. In addition, the Federal Government had introduced new regulations prohibiting the extradition or refoulement of a person who was more likely than not to be tortured. The Convention was thus viewed by the United States as a treaty with far-reaching implications both for the administration of justice and for the promotion of human rights and its provisions had been firmly enshrined in both law and practice.

6. Notwithstanding the country's fine record in eliminating torture, areas of concern persisted in the United States. Allegations of torture were made from time to time, particularly in the difficult domain of law enforcement and a few recent incidents had attracted considerable attention both within and outside the United States. But the fact was that torture occurred only in aberrational situations in the United States and was never a matter of government policy. When it did occur, the perpetrators were prosecuted and the victims were fully compensated. Any act falling within the Convention's definition of torture was illegal and prosecutable throughout the country.

7. The United States was determined to make continuing progress towards the goal of eliminating torture entirely. The vibrant public debate in the country about police conduct and the situation in prisons had proved useful in that regard and any infringement was quickly brought to public attention by the active, free and independent media. Under those circumstances, and with an effective judicial system, those who still committed torture could not hope to do so with impunity. In addition, the United States Government assisted in eliminating torture worldwide, for example by compiling annual country reports on human rights situations. In the Commission on Human Rights and the General Assembly, it supported country-specific resolutions concerning torture and the work of the Special Rapporteur on torture. Where appropriate, the United States also supported the establishment of international criminal tribunals and the work of the truth commissions set up in a number of countries.

8. Ending the practice of torture was not enough; assistance should also be given to the victims. Two laws - the 1992 Torture Victims Protection Act and the 1998 Torture Victims Relief Act - had been enacted to assist torture victims who had sought refuge in the United States to obtain compensation. Since 1980, the Government had supported civil claims by torture victims under the Alien Tort Claims Act and other statutes and had worked with other countries, particularly Denmark, in support of victim relief centres in the United States and elsewhere. Extensive funding had been made available for research on torture survivors and funds amounting to some US$ 1.7 million had been provided to 10 organizations that identified torture victims among refugee communities in major cities. Moreover, assistance to victims was not confined to United States residents. The report referred to the support given by the United States Agency for International Development to programmes on behalf of torture victims throughout the world. Furthermore, the United States was the largest single donor to the United Nations Voluntary Fund for Victims of Torture, to which it had contributed US$ 3 million in 1999. Under an executive order signed in 1998, President Clinton had established a working group which was composed of representatives of, inter alia, the Departments of State, Justice, Defense and Labor and which met regularly to ensure the full implementation of international human rights instruments. In preparing the report before the Committee, the Department of State had requested information on the implementation of the Convention from the Attorneys-General of each of the 50 states. The response had been encouraging and contacts to that effect would be maintained. The Department of State also took steps to ensure that participants in the armed services' military and police training courses and importers of military equipment from the United States were not known human rights violators. That commitment had recently been reinforced by legislative measures requiring increased attention to be paid to the human rights record of security forces receiving United States assistance. The fight against torture was not simply a governmental fight, but one in which NGOs, the media, intergovernmental organizations and individuals served as valuable allies. For that reason, while the United States

Government might not always agree with the criticism it received from various organizations, it welcomed their involvement and applauded their work on behalf of torture victims and their efforts to help local authorities educate police forces about the legal and human consequences of the excessive use of force. The United States did not claim to have accomplished its mission fully and admitted that a great deal remained to be done. Having himself represented numerous torture victims before a variety of national and international forums, he pledged to engage in a frank and constructive dialogue with the Committee.

9. Mr. YEOMAN (United States of America) said that the Civil Rights Division in the Department of Justice, for which he worked, was responsible for ensuring that the United States fulfilled its obligations under the Convention and other international instruments. The Division was a member of the White House Inter-Agency Working Group on Human Rights, which included representation from the State Department, the Immigration and Naturalization Service and other agencies responsible for ensuring that the United States fulfilled its international obligations.

10. Torture was prohibited throughout the United States and no one who committed abuse while acting "under color of law" was immune from prosecution. When the Department of Justice was informed of credible allegations of abuse or mistreatment by police officers, prison guards or other State actors, an investigation was carried out and, where appropriate, the perpetrators were brought to trial. State prosecutors could also prosecute abusers. Thus, no one was above the law in that area, but continuing vigilance was necessary regarding matters such as the use of excessive force by law enforcement officers and the physical and sexual abuse of inmates. The Civil Rights Division was primarily responsible for the enforcement of federal civil rights laws, including those designed to combat discrimination on account of race, national origin, religion, sex, etc. The Division was also responsible for enforcing laws that prohibited the use of excessive force by law enforcement officers and protecting the constitutional rights of prisoners. In most cases, such federal safeguards were complemented by similar laws at the state level.

11. In the United States, it was a crime to act "under color of law" to deprive a person of a right protected by the Constitution or other legislation. The term "under color of law" referred to powers conferred at the local, state or federal level. The types of misconduct covered by such laws included the use of excessive force and sexual assault. If the Department of Justice determined that a law enforcement official had violated the federal statute concerning excessive force, the official could be criminally prosecuted in a federal court and sentenced to a term of imprisonment. At any given time, the Department of Justice was investigating several hundred allegations of police misconduct. He cited three examples of successful federal prosecutions of law enforcement officers, one concerning a New Orleans police officer and two accomplices, the second a Pelican Bay prison officer and the third, the most recent case, four New York City police officers involved in the Louima case. Moreover, law enforcement officers who committed offences of that kind could also be prosecuted at the state level and disciplinary action could be taken against them.

12. The Civil Rights Division was also responsible for the enforcement of a 1994 enactment that made it unlawful for state or local law enforcement officers to engage in a pattern of conduct that deprived persons of rights protected by the Constitution or other legislation. The types of

conduct covered by the law included the use of excessive force, discriminatory harassment, false arrests, coercive sexual conduct and unlawful stops or searches. If a law enforcement agency was found to have engaged in a pattern of misconduct, the Department of Justice could sue it in federal court to obtain injunctive relief such as orders to end the misconduct and enforced changes in the agency's procedures. Private individuals could seek similar relief and obtain compensation pursuant to other federal and state laws. He cited a number of proceedings of that nature brought by the Department of Justice against the Pittsburgh and Steubenville police forces and against the New Jersey State Police, who had been required to end the practice of racial profiling in determining whom to stop for traffic violations and subsequent searches. The Civil Rights Division was currently investigating certain police departments in connection with the use of excessive force, including the Los Angeles, New Orleans and New York City Police Departments. Its work in that area was based on the principle that it was intolerable for police officers to abuse their positions by mistreating citizens or to be motivated by racial prejudice. The Civil Rights Division also took an interest in the running of places of detention and had investigated over 300 facilities in different states and territories since the enactment of the Civil Rights of Institutionalized Persons Act in 1980. Thanks to its efforts, tens of thousands of institutionalized persons who had been living in dire conditions now received adequate care and services. The Division's work focused on protection from abuse and harm and the provision of adequate physical and mental health services and proper sanitary and fire-safety conditions. In 1997, for example, it had entered into consent decrees with certain institutions regarding the provision of medical treatment, the use of restraints and the administration of psychotropic medication to the mentally retarded. In the same year, the Division had settled a lawsuit against the Montana State Prison with an agreement that protected vulnerable inmates from predatory inmates. In recent years, its work had focused on abuse and neglect in nursing homes and juvenile establishments, the sexual victimization of women prisoners, education in facilities serving children and adolescents and the mental health of inmates and pre-trial detainees. It had to date successfully resolved the vast majority of the problems uncovered by its investigations by obtaining voluntary or judicially enforceable reforms of the facilities concerned. If state or local officials failed to correct the deficiencies or to agree to an appropriate settlement, the statute authorized the Attorney-General to file suit in a federal court.

13. A statute enacted in 1998 required the promulgation of regulations to ensure the implementation of the provisions of article 3 of the Convention by the United States. In February 1999, the Department of Justice had published an interim rule establishing procedures whereby an alien could claim protection from removal to a country where he or she would be tortured. Under the regulations, an immigration judge would consider a claim for protection under the Convention during removal proceedings. The interim rule would ensure fair and accurate decisions.

14. The CHAIRMAN, speaking as Country Rapporteur, thanked the delegation for its informative introduction and for a very comprehensive and clearly structured report, which showed that the United States had developed a whole range of legal protections that were reflected in the federal and state constitutions and the common law. The protection enjoyed by arrested persons was clearly defined and satisfactory: access to counsel, habeas corpus in all circumstances, the requirement that an arrested person should be brought before a judicial officer within a reasonable period, etc. The only point that he wished to have confirmed was that persons taken into police custody could also contact a relative and, if they wished, a doctor.

At all events, the report not only provided a very satisfactory overview of the situation with respect to legal safeguards, but also drew attention to unresolved problems, an approach that few States were prepared to adopt.

15. He inquired about the reason for the five-year delay in submitting the report (CAT/C/28/Add.5). While welcoming the fact that the State party had not entered a reservation to article 20 of the Convention, he noted with regret that it had failed to make the declaration provided for in article 22. Moreover, on ratifying the Convention, the United States had made interpretative declarations regarding the definition of torture, stating, for instance, that it understood mental torture to mean "prolonged mental harm": he wished to be enlightened as to the reasoning behind the notion of prolonged harm.

16. Articles 1 to 16 were non-self-executing and yet, according to the report, their provisions indirectly formed part of United States law. Under those circumstances, would it not be preferable to make them self-executing so that individuals could invoke them in legal proceedings?

17. The principle of non-refoulement of persons to a country where they ran the risk of being tortured had become an important aspect of the Committee's work and the State party seemed to have complied satisfactorily with its obligations under article 3 of the Convention. The Immigration and Naturalization Service had been duly acquainted with its obligations in that regard. However, according to the United States interpretation of that article, the person claiming that he should not be expelled must demonstrate that it was "more likely than not that he would be tortured" (para. 158 of the report). That was not the Committee's interpretation of the phrase "substantial grounds for believing that he would be in danger of being subjected to torture" in article 3. It held that something less than probability could, in certain circumstances, constitute a real risk. He wished to know why the State party had opted for such a strict standard, which did not reflect the Committee's jurisprudence.

18. According to the report, torture had been criminalized in every state of the Union and prosecutions could be brought for offences such as assault, assault causing grievous bodily harm, murder, etc. Some states had also introduced an aggravating element when torture was involved. But the Committee urged States parties to incorporate the definition of torture set forth in article 1 in their criminal law rather than giving their own interpretation of the concept. Without such a definition, States were not in a position to comply fully with their reporting obligations, which depended on the collection of accurate data. In addition to the fact that there was as yet no body in the United States capable of gathering such data, the structure of American democracy, based on the devolution of power to a variety of levels down to the local authorities, made the data-gathering process difficult. Moreover, to obtain coherent and useful information, the terms used must be precise, devoid of value judgements and hence based on a uniform definition.

19. Another important reason for using the wording of article 1 of the Convention was that acts constituting torture were not just assaults causing bodily harm. Torture, within the meaning of the article, involved an agent of the State deliberately inflicting severe pain for certain purposes such as the extraction of a confession. That was different, in moral terms, from the simple use of force and, when the article 1 definition was not incorporated in domestic law, that

moral dimension was, either wittingly or unwittingly, overlooked. But, to his knowledge, there was nothing in the United States Constitution to prevent the introduction of a federal crime of torture. He was therefore interested in hearing the reasons for that omission.

20. Paragraph 26 of the report listed a number of law enforcement agencies that the federal authorities were to keep informed of their obligations. However, some bodies, such as the Central Intelligence Agency (CIA), were not mentioned. It would be very interesting to learn what instructions and training were given to persons recruited by the CIA and other intelligence services regarding, for example, interrogation methods. With regard to the armed forces, he asked what action had been taken by the authorities against the practice of "hazing", involving degrading treatment and in some cases brutality.

21. In paragraph 70 of its report, the State party acknowledged the existence of police abuse, brutality and unnecessary or excessive use of force. What was alarming was the devices and techniques of restraint used, such as stun guns and stun belts. In a report to the Committee, Amnesty International described those devices in detail and indicated that serious accidents had been reported. He asked whether the administration, however brief, of an electric shock of 50,000 volts did not constitute cruel, inhuman or degrading treatment. Another alarming phenomenon was the failure to prosecute and punish police misconduct. As one of the basic objectives of the Convention was to ensure that torturers did not enjoy impunity, he wished to know what steps were being taken by the United States authorities to remedy that situation.

22. A key question he wished to put to the delegation of the State party concerned the United States position on issues of command control. According to the United States Government interpretation, the State could not be held responsible for torture unless there was some element of advance knowledge and physical control over the perpetrator.

23. Turning to articles 5 and 7 of the Convention, he noted that the United States had created an extensive jurisdictional capacity that enabled it to prosecute its citizens for acts of torture committed either within the country or abroad. It should be noted, however, that such jurisdiction also extended to acts committed by nationals of other States. He invited the State party to comment, in particular, on two cases recently reported by human rights organizations. The first concerned a Peruvian army officer who had allegedly committed numerous acts of torture in his country. Following the filing of a complaint against him in the United States, he had reportedly been arrested at Houston airport, but he had subsequently been released and authorized to leave the country on the grounds that he was entitled to immunity from prosecution. Yet according to the human rights organizations that had reported the case, the person concerned was not a diplomatic official. The question therefore arose as to why he had been accorded immunity and whether there had been a violation not only of the provisions of the Convention, but also of the rules of customary international law. Moreover, the delegation of the State party had stated that it was possible, under the Constitution, to criminalize certain acts such as piracy that constituted a breach of international law. Did torture not qualify as such an act?

24. The second case mentioned by the human rights organizations concerned a Haitian national who had allegedly tortured prisoners while serving as a senior officer of the Haitian police force under the Duvalier regime. When the person concerned had been visiting the United States, the authorities of that country had reportedly refused to extradite him to Haiti

notwithstanding urgent requests to that effect from the Haitian Government and had sent him instead to a safe place where he would be shielded from prosecution. According to the organizations that had raised the issue, the person in question had been in the pay of the CIA while serving with the Haitian police. If those reports were true, there had been a violation of the provisions of the Convention requiring all States parties to prosecute or extradite torturers. He invited the United States delegation to comment on those allegations. Furthermore, he requested confirmation of the statement in paragraph 198 of the State party's report that there had to date been no cases of extradition to another country for torture or torture-related offences.

25. With regard to article 10 of the Convention, the State party had described in detail in its report the numerous measures that had been taken both by the Federal Government and by the states in the area of education. He wished to know whether medical students received training that would enable them to detect the after-effects of torture and provide victims with the requisite care. The members of the delegation of the State party had also doubtless received a copy of the report submitted by the Special Rapporteur on torture (E/CN.4/2000/9). In paragraph 1114 of that report, the Special Rapporteur reminded the United States Government that it had not responded to a number of cases transmitted to it in 1995, 1997 and 1999. What were the reasons for its silence?

26. Mr. EL MASRY (Alternate Country Rapporteur) said he had noted with satisfaction President Clinton's decree on the application of international human rights instruments, in which the State party had undertaken to fulfil all the obligations it had assumed under the instruments it had ratified. He also noted that the United States was the principal donor to the United Nations Voluntary Fund for Victims of Torture. Nevertheless, a number of concerns remained regarding the provisions of the Convention, in particular physical and sexual violence against prisoners by prison staff and other inmates, the fact that male prison wardens had unsupervised access to women prisoners, the treatment of mentally ill persons and illegal migrants in detention, racial discrimination against members of minorities, the excessively harsh conditions and extremely stringent procedures to which persons held in "super maximum security" prisons were subjected, the ill-treatment of children in detention and the fact that the number of children placed in the same cells as adults had, according to the United States Department of Justice, more than doubled between 1995 and 1997.

27. With regard to articles 11 to 16 of the Convention, he drew attention to the detailed information contained in the report on the provisions of the United States fifth amendment concerning self-incrimination and the Supreme Court rule under which detainees were permitted to remain silent and to have a lawyer present during interrogation. According to information received by the Committee, however, there were cases in which those guarantees were not respected. Reports that children were taken into custody by the police and questioned about serious crimes without having access to counsel and in the absence of their parents were particularly alarming. Moreover, some minors had allegedly been sentenced to death following legal proceedings in which confessions they had made under duress had been used as evidence against them. The State party was required to take action to halt such practices, which were contrary to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, and to guarantee protection for children who came into conflict with the law. The State party's obligations under articles 11 and 16 of the Convention should also be respected. In particular, mechanical and chemical means of restraint that were dangerous and cruel should be

prohibited and those that were not should be used only in extremis. The Committee had received an increasing number of reports of prisoners being tortured and ill-treated by means of electric shock devices. According to some sources, prisoners had actually died as a result of the use of such methods of restraint. The Committee wished to know whether the authorities had carried out an investigation to assess the effects of such devices. Was it true that 11 persons had died after being immobilized in restraint chairs and that such chairs were also used in detention centres for minors and by the Immigration and Naturalization Service?

28. Long-term solitary confinement was also a matter of concern. Over 20,000 prisoners, including many who were mentally ill, were held in so-called "super maximum security" facilities. A large number of them spent many years, or even served their entire sentence, in such facilities. It had even been alleged that prisoners were subjected to that category of imprisonment for minor infringements of disciplinary rules. Such practices, which were clearly in breach of article 16 of the Convention and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, had been denounced by international human rights bodies and, in particular, by the Special Rapporteur on torture. The State party had a duty to ensure that no prisoner was held in solitary confinement for an unduly long period. In addition, the criteria governing the assignment of prisoners to "super maximum security" facilities should be urgently reviewed.

29. The lack of independent oversight mechanisms constituted a major impediment to the conduct of impartial investigations. Most prisoners who wished to complain about the way they were being treated had to address their complaint to the prison authorities themselves. Only a few states had external supervisory bodies. As a result, the federal courts were currently the only institutions capable of ensuring effective oversight of prison conditions, but the procedure was long and unwieldy. In that connection, he wished to know whether the State party intended to set up independent oversight bodies with authority to consider complaints of ill-treatment filed by prisoners and to supervise conditions in all detention centres.

30. With regard to the application of article 14 of the Convention, the State party stated in its report that "[a] person subjected to torture within the United States has a legal right to redress and an enforceable right to fair and adequate compensation ...". But the 1996 Prison Litigation Reform Act greatly restricted prisoners' scope for suing for compensation. By requiring them to prove that they had suffered physical harm, the Act prevented them from bringing an action for psychological damage. That requirement conflicted with article 1 of the Convention, in which torture was defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted".

31. Mr. CAMARA congratulated the Government, through its delegation, on producing a particularly frank and comprehensive report. However, in keeping with the usual paradox, the more a State endeavoured to anticipate the Committee's questions, the more queries its reports tended to raise. The statement in paragraph 40 of the core document (HRI/CORE/1/Add.49) that "[t]he Constitution stands above all other laws, executive acts and regulations, including treaties" raised questions about the circumstances in which the United States fulfilled its international obligations. Paragraphs 302 and 303 of the initial report referred to the reservation made by the United States to article 16 of the Convention because of the constraints imposed by the federal

character of its system. But the subject of law in the case of an international treaty was the United States, and that subject, the Federal Government, was the Committee's interlocutor even though its competence vis-à-vis the states of the Union was limited. Moreover, according to article 27 of the Vienna Convention on the Law of Treaties, a State party to a treaty could not invoke the provisions of its internal law as justification for its failure to perform a treaty. Hence the Committee could not accept a State party's argument that its federal character prevented it from fulfilling all its obligations. Furthermore, the Convention against Torture recognized the possibility of entering reservations in only one case, that referred to in article 28 with respect to article 20. A reservation to article 16 was therefore inadmissible, since the Convention itself regulated the question of reservations and the general regime governing reservations in public international law was not applicable.

32. As the subject did not seem to have been mentioned in the report, he asked how the United States dealt with asylum-seekers on their arrival in the country. Were they detained or free to come and go as they wished?

33. Mr. SILVA HENRIQUES GASPAR welcomed the delegation of the United States and thanked the authorities for submitting such a comprehensive, detailed and frank report, reflecting the principles of openness, transparency and democracy for which the American nation was renowned. Like Mr. Camara, he was concerned about the interpretative declaration concerning article 1 of the Convention and the reservation to article 16, which related to fundamental provisions of the Convention and could have an adverse impact on its implementation.

34. With regard to overcrowding in prisons, a problem candidly described in the report, he had read in the international press that the rate of overcrowding in American prisons was 10 times greater than the highest rate recorded in European prisons and was actually 12 times greater in Texas and 16 times greater in California. While it was not part of the Committee's remit to comment on a State party's policy on crime, it certainly had a duty to emphasize the risk of ill-treatment and of inhuman or degrading treatment for prisoners, which was proportionate to any increase in the prison population. The situation was such that the United States authorities would do well to review the appropriateness of a policy on crime that resulted in an excessively high rate of imprisonment. With regard to articles 11, 12 and 13 of the Convention, he would appreciate additional information about the issue of the privatization of the prison system, again an upshot of the policy on crime. It was hard to see how the State party could exercise full supervisory authority, as required by articles 11 and 12 of the Convention, over extremely powerful private companies whose aim was, by definition, to make money.

35. He was dismayed at the reintroduction of the practice of chain gang labour for prisoners, mentioned in paragraph 334 of the report. The image of shackled convicts belonged to the nineteenth century and should now be seen only in the cinema.

36. With regard to article 16 and the scope of the United States reservation, he wondered whether the expulsion of an alien who had spent more than 40 years in the United States, starting a family and finding employment, but who had preserved a merely formal contact with the State in which he was born and had been expelled for a minor offence committed 10 years previously could not be characterized as inhuman treatment or a disproportionate penalty.

37. Lastly, he asked for information about the methods used to publicize the Convention, since he had been surprised, on attending seminars at Massachusetts and Washington law schools, to discover how little was known about the existence of the Convention against Torture and the possibility of invoking article 16.

38. Mr. YAKOVLEV said he agreed with other members of the Committee that the report covered a very wide range of issues and was openly critical, thus creating a favourable impression. The Committee was aware of the scale of the problems created by the rising crime rate in the United States. It was particularly important in that context to introduce effective countermeasures while at the same time guaranteeing full respect for human rights and legality.

39. He asked for more details about four laws recently enacted in the United States. First, with regard to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, the enormous problem of the influx of immigrants into the United States raised the question of how the State could preserve its sovereignty without infringing individual rights, especially under the Convention against Torture. The Committee had been informed that the Act failed to acknowledge that torture constituted, in itself, a sufficient ground for not returning an alien to his or her country of origin. It would welcome clarification of that point. According to some reports, the Antiterrorism and Effective Death Penalty Act severely curtailed the power of federal courts to remedy erroneous decisions by state courts, thereby jeopardizing the right to a fair trial. Additional information about the Act would be useful, since experience showed that States' reaction to terrorism, however justified, should always be accompanied by measures to guarantee a fair trial. Under the Prison Litigation Reform Act, prisoners were required to exhaust administrative remedies and provide evidence of physical harm before bringing an action before a federal court. But the Act concerned individuals who had been deprived of their liberty and who were therefore unable to explore all avenues of redress, so that the right of prisoners to file complaints was restricted. Moreover, it covered only physical harm, although mental torture could in some cases be more difficult to endure than physical torture. The Committee would appreciate clarification of that point since the United States had made its ratification of the Convention subject to a number of reservations, one of which concerned the definition of torture, which was to be understood as referring only to physical treatment. He would be grateful to the delegation for any light it could shed on that point.

40. Mr. RASMUSSEN welcomed the United States delegation and thanked the United States Government for its report, whose quality had already been commended by other members of the Committee and which described the problems with which the State party had to deal.

41. The issue of overcrowding in prisons, which had been referred to by an earlier speaker and which prevented inmates from engaging in meaningful activities such as attending courses, was closely bound up with the problem of inter-prisoner violence, which the prison authorities had a responsibility to prevent. What measures did the United States Government contemplate to address the problem? Had it considered, for example, the possibility of alternatives to imprisonment? The question of juvenile detention had already been raised, but he drew attention to the need to segregate minors from adults. "Super maximum security" facilities should be abolished as a type of imprisonment that constituted inhuman and degrading treatment and also had a serious adverse impact on mental health. Pending abolition, he would welcome figures for the number of prisoners held in such facilities and the length of their detention. It would also be

interesting to learn of the procedure whereby prisoners were condemned to such a regime, whether it was possible to return to a normal regime and at what intervals their case was reviewed. A description of the complaint procedure for inmates of "super maximum security" facilities would also be appreciated.

42. He welcomed the educational activities undertaken in implementation of article 10 of the Convention and the measures taken to rehabilitate victims of torture. He asked whether special training courses were provided for prison doctors and inquired about the procedure to be followed when they detected signs of ill-treatment inflicted by members of the police force.

43. Mr. MAVROMMATIS thanked the United States authorities for their excellent report, which was both candid and provided practical examples of the implementation of the Convention. However, the initial report had been submitted five years late and, if the periodicity laid down in the Convention was applied, the State party should have submitted its second periodic report in 1999. The United States authorities, who had no lack of competent staff for the purpose, should be able to provide good reasons to justify such a delay.

44. The United States had made a considerable contribution to the promotion and protection of human rights worldwide and achieved very good results in that area. It was therefore regrettable that it had resorted to reservations and interpretative declarations to bring the Convention against Torture into line with its own legislation instead of adopting the opposite approach and giving citizens access to the additional protection afforded by international instruments. He hoped that the United States would consider withdrawing its reservations. He also strongly urged the State party to consent at least to recognize the competence of the Committee to receive and consider communications from individuals. Such a step would enhance the protection available to its citizens and would set a good example for other States parties.

45. Mr. YU Mengjia welcomed the United States delegation and thanked it for its oral introduction. He was pleased to note that the United States was endeavouring to improve the existing situation in order to comply with the provisions of the Convention against Torture.

46. The report frankly admitted that the United States had the largest prison population in the world, but no explanation was given for that situation, whose urgency was compounded by the fact that prison overcrowding was one of the causes of torture and ill-treatment. According to information provided to the Committee, less than 1 per cent of the 12,000 complaints recorded had led to criminal prosecutions and the percentage of convictions was even lower, so that a certain amount of impunity seemed to exist in the United States. That point called for clarification. With regard to the treatment of prisoners, he had been shocked to learn that women prisoners were handcuffed when giving birth and asked whether that was the normal practice and whether the authorities planned to put an end to it. As the report described the chain gang phenomenon in detached terms, it was difficult to know whether the United States accepted the practice or viewed it as abnormal treatment. As had already been noted, the imprisonment of minors in the same premises as adults gave grounds for concern. In the report, the United States authorities blamed financial difficulties, but only poor countries were justified in using such an argument, on which he invited the delegation to comment.

47. Lastly, he suggested that the State Department's annual report on the human rights situation in individual countries should include a section on the United States, in application of the principle of universality and to enable readers to make useful comparisons.

48. The CHAIRMAN asked the United States delegation whether it could confirm NGO allegations that asylum-seekers and illegal immigrants were held in the same facilities as prisoners and sometimes even in high-security facilities. He also wished to know whether it was true that young people who had been sentenced to death when they were under 18 years of age, or at least when they were minors, since the age varied from state to state, were about to be executed. In the light of the United States interpretation of article 1 of the Convention, he asked whether, in cases where the Federal Government or the Government of a state delegated responsibility for the establishment and running of a prison to a private company, the State party considered that public officials who behaved in a manner that conflicted with the provisions of the Convention in such establishments were relieved of criminal responsibility. In conclusion, he thanked the delegation for its openness and good will, which had prompted the members of the Committee to raise a very large number of questions.

49. Mr. KOH (United States of America) said that the United States report had been submitted late because the preparation of such a report was a lengthy process. Information had been gathered from administrative and judicial bodies in all 50 states of the Federation. He hoped, however, that improved inter-agency cooperation would lead to speedier preparation of the report in future.

50. The United States was not covered in the Department of State's annual human rights report because the purpose of the report was to provide the United States, the leading donor of aid, with an annual review of the human rights situation in individual countries so that Congress could take informed decisions in that regard.

The public part of the meeting rose at 12.20 p.m.